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REPORTS

NOTES OF THE WEEK

Desertion and Offer to Resume Cohabitation

Desertion is terminated by a genuine offer to resume cohabitation if the offer is such that in all the circumstances, including the previous conduct of the deserting party, it ought to be accepted and in *Thomas* v. *Thomas* (1946) 110 J.P. 203; [1946] 1 All E.R. 170, it was held that a withdrawal from cohabitation by the wife, unaccompanied by any other matrimonial misconduct, does not disentitle her to an order for maintenance if she repents and shows a genuine desire to resume married life, even if the separation had been brought about by her act and had been unjustified in the first instance; a refusal by the husband to accept such a genuine offer to resume cohabitation turns him into a deserter.

In *Parkinson* v. *Parkinson* (*The Times*, April 14) justices had dismissed a wife's complaint alleging desertion and wilful neglect to maintain on the ground that the parties had parted by mutual consent without any bargain on the part of the husband, express or implied, that he would maintain the wife as a separated wife. Following this dismissal the wife offered to resume cohabitation with her husband. The husband adopted the attitude that her offer was not genuine and the magistrates accepted his contention. They dismissed the complaint, and from this dismissal, the wife appealed. Lord Merriman, P., referred to the decision of the Court of Appeal in *Bosley* v. *Bosley* [1958] 2 All E.R. 167, which showed that where spouses agreed to separate, not by an agreement embodied in the deed but by a mere oral agreement, there was nothing to prevent either spouse from receding from that agreement and unilaterally making demands upon the other for a resumption of cohabitation. As to the genuineness of the wife's offer, Lord Merriman said he could not see that there was the slightest evidence to justify holding that the wife's offer was not genuine.

Marshall, J., concurring, said it was not sufficient merely to assert that an offer was not genuine, it was necessary to prove some real ground upon which the belief that the offer was not genuine was based.

The Court varied the magistrates' order by deleting their dismissal of the wife's complaint and inserting a finding that the husband had deserted the wife and that he had wilfully neglected to maintain her, and remitting the case to the magistrates for their adjudication upon the amount the husband should be ordered to pay the wife and for reconsideration of the question of the custody of their child.

It is important for magistrates to remember that they are the judges of the question whether an offer to resume cohabitation is genuine and ought to be accepted. It is not enough for the spouse refusing to resume cohabitation to say that he does not believe it to be genuine, and even if the magistrates are satisfied that he is sincere in his statement it still remains for them to consider whether there is evidence to justify his belief.

The Policeman and the Boy

Now that the report of the tribunal which inquired into allegations against certain Scottish police officers has been available to the public, some people are asking whether it was really so serious a matter as to justify such inquiry. Be that as it may, the fact that the incident caused such a stir calls attention to the fact that assaults by police officers are extremely rare, in spite of the frequent provocation to which they are subjected. The public expect a high standard of self-discipline from them, and they are seldom disappointed.

The tribunal found a constable had assaulted a boy, under great provocation, but without justification. For a policeman to lose his temper and to strike a boy for his impudence and bad language is not unnatural, but it must not happen. More is expected of policemen than of the ordinary man, and it is largely because the police exercise so much patience and self-restraint that they enjoy the trust and respect of law-abiding people, and, indeed of some who are not law-abiding.

Time was when the police occasionally did justice in a rough sort of way and the public appeared not to resent it. We have heard a policeman whose memory carried him back to the time when policemen carried rattles tell of fighting, back to the wall, truncheon in one hand and rattle in the other, with a hostile

mob. And, he said, at the end of it nobody was arrested and everyone was satisfied. Maybe that was so, but it would not do today.

There is a good deal of loose talk about the best way of handling hooligans. There are those who say a good trouncing by a policeman at the time would be far more effective than court proceedings and fines. If it could be certain that none but the offenders would be dealt with, and that no policeman would lose his temper or use excessive violence, there might be something to argue about. As things are, policemen ought not to be vested with summary powers of that kind, and we feel sure they would far rather not be. How many advocates of the method would care to have it applied to their own sons?

There is no reason to doubt the forbearance and patience of the police, and the Thurso incident need not shake our faith in them.

Confessions

The principle is well established that to be admissible in evidence a confession must be free and voluntary, but the application of the principle sometimes presents difficulties, especially in the matter of a proper direction to a jury. Even if the Judge is satisfied that a confession may be given in evidence, it is a misdirection to tell the jury that they are bound to approach the confession on the footing that it has been properly obtained according to the rules of evidence, *R.* v. *Murray* (1951) 34 Cr. App. R. 203.

In *R.* v. *Sutherland and Johnstone* (*The Times,* April 13), the Court of Criminal Appeal quashed convictions on the ground of misdirection by the chairman of quarter sessions.

The Lord Chief Justice said the only evidence against either of the appellants was alleged confessions. In the case of one appellant it was alleged that the confession was the result of an inducement by a police officer, and in the case of the other that it was a concoction. Having reviewed the facts, Lord Parker said that even if the chairman was satisfied that, notwithstanding the alleged inducement, the confession was free and voluntary and decided to admit it to the jury, it was for him to explain the position to them and tell them that if they were not satisfied that it was free and voluntary they should reject it. He did not do so, and there was the further point that he did not warn the jury that the statement of Johnstone, which implicated Sutherland, was not evidence against Sutherland. The court must quash the convictions.

When two or more defendants are jointly charged, it often happens that a confession or other statement made to the police by one implicates one or more of the others. Magistrates, who combine the functions of judge and jury, have to be careful to remind themselves that a defendant's statement may be evidence against himself but not against a co-defendant. It is very difficult to disregard completely what has been said, especially if it seems likely to be true, but the rules of evidence are strict in this matter. In the cases of Sutherland and Johnstone the Lord Chief Justice observed that it might be that these men were very lucky, but the court felt that it would be unsafe to allow either conviction to stand.

Consecutive Sentences

In the Court of Criminal Appeal on April 13, the Lord Chief Justice referred to the question of consecutive sentences and a difficulty that sometimes arises when a sentence is expressed to begin "at the expiration of the term of imprisonment you are now serving" or words to the same effect. In a case where the prisoner was already subject to two or more consecutive sentences of imprisonment the result of such a formula would be that the new term would begin at the expiration of the particular sentence he is serving which might be the first of two or more sentences. Lord Parker suggested that generally a better form of words would be "consecutive to the total period of imprisonment to which you are already subject."

The difficulty is not likely to arise often in a magistrates' court, but it may happen that a man is brought up from prison to answer further charges, and in that case the warrant or warrants of commitment in respect of sentences passed by the magistrates' court should state specifically the existing sentence which the sentence, or sentences, passed by the magistrates' court should follow.

The "Disc" Parking System versus Parking Meters

Determined to keep himself fully informed about all possible methods of tackling the ever-increasing problem of "parking" the Minister of Transport and Civil Aviation requested a party of experts to visit Paris from April 15 to 18 to study the progress of the scheme for controlling parking there in the "Zone Bleue" by means of the disc system. It is explained in a Ministry press notice that the system requires that every motorist wishing to leave his car in the street within a certain area in central Paris must display on his windscreen a disc which shows the time at which he parked his car and when, according to the relevant regulations, he must remove it.

A similar party paid a visit to Paris in January, 1958, soon after this scheme—the first of its kind—was introduced, and the object of the new visit is to ensure that the Minister has the latest information about the development of the scheme.

Attached to the press notice is a summary of the conclusions to which the earlier party came. They thought that, with adequate supervision, the disc system appeared to provide an effective means of controlling parking but that it had a number of disadvantages compared with the parking meter system. The disc does not itself designate where parking is and is not permitted and it offers more opportunity for evasion of the desired control than does the meter. The disc involves no charge to the motorist but the system requires about three times as many people to secure proper enforcement as does the parking meter system. The cost of the two systems is probably about the same but whereas the meter system puts the cost on to the motorist who wishes to use the parking facilities the disc system puts the charge on to the public at large. The revenue obtained from the meters can be used to subsidize the provision of off-street parking accommodation. There is no such revenue from the discs.

It will be interesting to see whether the latest party of experts comes to similar conclusions or whether they are more favourably impressed by the disc system than were their forerunners.

Practical Jokes

Most people will have laughed at practical jokes played upon pompous individuals or upon officials, who may be regarded as the natural prey of the practical joker. The reminiscences of Toole and Du Maurier, for example, contains instances which a person who is not affected, and reads the story afterwards in print, may be prepared to believe to have served the victim right. Within limits (and there must be limits) similar deceptions can be

tolerated as part of the "rags" in the cause of charity, which today have come to be an accepted part of life in the so-called "red-brick" universities. Entirely different considerations apply to the deliberately false alarms of which there have been several in recent months, which have led to temporary closing of main line railway stations or delay in the flight of aircraft. It is sometimes said that the authorities who control the railway station or the airport ought by now to have learnt to disregard messages of this kind. For all the outsider knows, it may be that they do ignore some such messages; naturally the public only learns of those which are taken seriously and most, like a false alarm of fire, must be taken seriously because it is always possible that a message stating that a bomb has been put in a suitcase or a parcel could be true. There have been outrages prevented, because one of those concerned repented at the last moment: the discovery of the Gunpowder Plot is the most famous. The authorities would have to be very sure indeed that such a message was a hoax, before they decided not to act upon it. It is gratifying to learn from *The Times* that the civil defence organization for Middlesex is in a position to send men who know how to apply scientific means for discovering the presence of danger very promptly; it has in fact more than once given assistance in this way at London Airport. From a letter in *The Times* on March 27 it seems that there are several firms which use radioactive material in business, and possess staff and equipment that can be made quickly available to public authorities, if a message states that such material has been left in a public place. Nevertheless, what is most needed is for some method to be devised of catching the perpetrators of such a hoax, when we do not doubt that the courts would find means of inflicting proper punishment. One reads from time to time that the flying squad of the metropolitan police has arrived with almost miraculous speed at a call box from which a message has been telephoned, but even with most perfect liaison between the authorities victimized and New Scotland Yard it would be impossible, as a rule, to reach the point from which a message had been telephoned before the person who had sent the message had got clear. The message could, indeed, be sent from inside a building, or from a call box in any part of the country. It is easy to imagine circumstances in which human life was lost, because an operating surgeon was delayed, or because an appliance or remedy consigned to a hospital by air did not arrive in time. Apart from extreme instances of this kind, every such hoax produces great inconvenience and monetary loss to public bodies and to individual travellers. We have no doubt that persons skilled in such matters are already doing their best to devise methods of detection and counter-action. The rest of us can only hope for the speedy perfecting of their arrangements.

Obstructing a Shop

At 121 J.P.N. 703 we told the story of a shopkeeper at Windsor, who had advertised in the local newspapers that the street leading to his shop was available for use by customers with cars, because it was not an appointed parking place or a street in which parking was restricted. In other words, customers were entitled to draw up to his door, go into the shop and drive away, if they did not leave their cars for so long as to prevent exercise of the same right by other people. His advertisement had the good effect of producing from the chief constable a public statement, agreeing that this was the position, and it is to be hoped that in the 18 months which have elapsed the shopkeeper has been able to benefit accordingly. A Midland correspondent sent us at the end of March a cutting from the *Warwick Advertiser* telling of a parallel incident, with differences. The premises involved were not an ordinary retail shop, but the establishment where a funeral director carried on his business: we assume that at Warwick people do not just pop in to buy a coffin. In the hope of keeping his door clear for customers, he exhibited large "No Parking" notices—with the unfortunate result that he was quickly dropped on by the borough council (of which he was a member) for exhibiting advertisements without permission under the Town and Country Planning Act, 1947. However, this was easily set right by his substituting rather smaller notices which did not need permission. A feature which the trader seems to have found especially annoying was that many of the worst offenders were officials of the county council, and in one case a woman member of the county council who (according to him) had claimed a right to leave her car in front of his door because she was going to a county council meeting. He added that there was a car park at the county offices, so that there was less excuse. It is not infrequent to see "No Parking" notices on the front of business premises, but these in themselves do not make obstruction of the street any more illegal than it otherwise would be. They might have some value as an indication of the frontager's intention to set the law in motion if the police refuse to do so.

Where the Money Goes

A correspondent sends us a small printed folder issued by the city council of Westminster, with the demand notes for the first half of this year's general rate. Entitled "Where Your Money Goes" this is a clear and simple statement, which any ratepayer can understand. It also contains some items of information which will be new to most of the city's ratepayers, even those who keep in touch with public affairs. No doubt there are other rating authorities who issue the same sort of information in one form or another; those who do not might find it worth while to ask for a copy of the Westminster leaflet. One special feature affecting metropolitan boroughs is the very high proportion of rate money for which the rating authority is merely a collecting agent. In greater or less degree the same is true of provincial rating authorities, but the London position is exceptional because of the large number of public services provided by the London county council. Westminster, in fact, will be collecting this year well over £15 million, representing a rate of 14*s.* 6*d.* in the £. Rather more than £2 million, representing a rate of 1*s.* 11*d.* in the £, is available for its own spending. There is nothing in the leaflet to indicate any desire on the city council's part to make a political point here, despite the difference in political complexion which has endured for many years; the financial point could have been made by other boroughs whose councils agree politically with the London county council, and a similar point could be made in provincial towns. It is, indeed, one of the reasons why a leaflet of this sort is a good thing, in that it helps the ratepayer to understand the processes of local government.

Nash Façades

There will be general approval of the decision announced by the Crown Estates Commissioners to save almost the whole of the terraces round Regent's

Park, as well as both wings of Park Place, which forms the northern-most link in the chain of roads running from the Duke of York's steps to Regent's Park. It is possible to make too much of these things, and Nash (we suppose) was not one of Europe's most inspired architects. His work has, however, for generations been as characteristic of the London scene as Bernini's work of Rome. Regent Street Quadrant gave place between the wars to portland stone or concrete, and Carlton House Terrace has been altered, first between the wars by inserting a stone or concrete building belonging to a manufacturing firm in Carlton Gardens and secondly, since the second world war, by the addition of an upper storey at the instance of the Foreign Office, which now occupies some of the mansions in the terrace. This last alteration is now accepted as unobjectionable by the ordinary Londoner. The commercial intruder in Carlton Gardens was strongly resented at the time, but we doubt whether today anybody notices its presence, and there are not many people left to mourn the disappearance of the Quadrant, as they knew it in the days of King Edward VII. Now London is to have a New Zealand Tower 228 *ft.* high at the foot of Haymarket; a tower more than 170 *ft.* high on the site of the Café Monico, and another close to Oxford Circus, between Oxford Street and Cavendish Square—almost on the site of the historic battle between elegance and commerce, fought by the Howard de Walden Estate and the original John Lewis. We are not to be taken as deploring these developments. The tower and podium form of building has been bitterly assailed—though we believe most English people like it better than the up-ended matchbox style appearing almost daily upon London sites. If the Commissioners have their way, there will be an office block with a 14 storey tower facing Marylebone Road, at the southern end of their Regent's Park estate, but otherwise the work of Nash and Burton is to be outwardly preserved, with almost complete internal reconstruction. Some modernists will condemn this as a compromise, but most Londoners and visitors will be glad that Regent's Park is to be spared for another couple of generations or so from the intrusion of the type of urban architecture which is prevalent at the moment.

"SERVED PERSONALLY"

By CHARLES BREAKS

Constable Smith takes the oath and declares that the summons was served personally on the absent defendant by leaving it at his place of abode. Constable Smith has handed many summonses to defendants during his service in the force and the diversity of the reception of a summons by differing individuals is an interesting item in human behaviour and thought.

"What will I get, mister?" was the query of the old lady who so often forgot to take out her dog licence; "will they send me to prison this time?": Smith puts the old lady's mind at rest with kindly tact.

"Take your damned summons away" was the greeting of the irascible gentleman who had been reported for ignoring traffic signals whilst driving his car; continuing "I'm being victimized, I am—but I'll fight this case!"

"Our Johnnie is such a good boy" snapped the angry mother as both the summonses for Johnnie and his parents were served for her son's delinquency in smashing 12 street lamps by means of a catapult; "besides, Johnnie has never had a catapult, have you, Johnnie?" "No," replied the dutiful son.

"*Me*, serving beer after hours" said the landlord reported for breaches of the licensing laws; "not on your life—never served a drink out of hours during the whole time I've been in the licensing business; didn't I show the sergeant the time by my clock—why his watch was wrong, fast, that's what it was—my wife will say his watch was wrong!"

"Do I have to come to court?" asked the young lady that had been reported for "speeding" in a "built-up" area; "can I write a letter and send them a couple of pounds for the fine?" Smith suggested that it would be better if she did attend court and said he could not advise on the matter of the cash enclosure.

"Will this get in the papers?" inquired the harassed looking café proprietor as he was handed a summons relative to his premises not being up to the standard, so far as the cleanliness in preparation of food was concerned; continuing "this will about ruin me if it does!" Smith could not give an opinion to the worried recipient.

"I'll write to the Home Office about this injustice" shouted the choleric gentleman who the law said had parked his motor car for an unreasonable length of time in a busy thoroughfare; "left the car for only a few minutes whilst I went to my tailor—what is the country coming to?" Actually Smith knows the car was left unattended on that particular day for the whole of an afternoon, whilst its owner attended an auction sale.

"Assault, me assault anybody; its her that assaulted me, the skinny cat!" averred the young lady, plying crimson lipstick as she answered the door and took the summons.

"Good gracious, constable, the first summons I've ever received" said the smiling gentleman reported for illegally taking a salmon from conserved waters; "I must take a label to court with me and try and persuade the bench that I got the salmon out of a tin. And by the way, constable, will you have a whisky and soda?"; Smith grins but declines.

"Garn, copper, wrap some fish and chips in it," this from a drape jacketed youth as he flung his summons for obstructing the footpath into Smith's face. Smith controlled his desire to act summarily and as he saw the document flutter on to the grimy doorstep and the door closed with a bang, he quietly wrote some appropriate notes in his note book.

"I'm owing 50 quid, wife maintenance; oh, the liar, I don't owe 50 bob; she wants to get me into goal, that one does—I'm going to get a solicitor on this job, I am!" Smith ruminates as he walks away on one aspect of matrimony.

The sadness, the anger, the humour—not always heard in detail in court; all small cameos seen and heard by the policeman—backgrounds to the declaration made that the summons was "served personally."

MAINTENANCE ORDERS AND THE RECOVERY OF PUBLIC MONEY

By P. H. SUTTON

The annual report of the National Assistance Board for December 31, 1957 shows that there is an annual deficit in the order of £8 to £10 million pounds per year due to persons, with means, failing to support dependants under a court order.

It was said, in an article at 122 J.P.N. 838, that the enforcement of maintenance orders by courts of summary jurisdiction needs to be more rigorous where the means of the defendant permit. This observation may be true but it is suggested that the deficit is either due to a lack of foresight in the legislation or due to the fact that the assistance board officers cannot, for one reason or another, assist in its prevention.

The principal way in which the deficit occurs is as follows. A man fails to pay under the court order for one week so that his dependant may claim national assistance. The board must meet the dependant's claim, if she is otherwise without means of support, and continue to grant assistance whilst the man fails to pay. The dependant may request the court to issue process to enforce the arrears, but there is no compulsion upon her to do so. The assistance board cannot, for example, refuse assistance until she makes a complaint to enforce the arrears.

When a man is brought before the court and it is found that he has wilfully or culpably neglected to pay under an order then the court may send him to prison, but no court would do this without giving the man the opportunity to pay up his arrears.

If after process the man pays as ordered the dependant will no longer be granted assistance but will draw the current payments plus the arrears and thereby be paid twice for the period when the man failed to pay the order.

Experience shows that when a man has failed to pay under the order for some time, possibly through no fault of his own, the dependant is awarded assistance by means of an order book. The assistance board then obtains the dependant's authority to receive any monies paid into court. Upon the man recommencing to earn, any current process is naturally enforced, but as soon as the process is paid the man ceases to pay the order and the dependant continues to draw the money on the order book. There is no incentive for the dependant to enforce the order and " waste her time at court " because any monies received by the court are paid direct to the National Assistance Board and in no way benefit the dependant.

Experience further shows that, when a court makes its monthly return to the assistance board in respect of cases payable on the dependant's authority, the board can do little or nothing in respect of the unpaid orders.

The article has so far dealt with national assistance but there are also thousands of pounds that the Inland Revenue fails to collect by way of income tax.

When an order is made, a man is taxed as if he never earned the annual amount of the order. If a man then fails to pay the order in whole or in part that amount which he fails to pay comes to him, under the P.A.Y.E. scheme for deduction of tax, as a tax free gift from the Chancellor of the Exchequer. The dependant, if she pays tax, soon realises her situation and requests a certificate of the amount actually paid to her in the financial year and thereby claims a rebate upon her tax. The man's tax is not then adjusted because the dependant's tax office rarely knows the tax office which deals with the man's tax allowance. The man, however, may be made to pay up his arrears in the next financial year but does it ever happen that a dependant asks for a certificate to show that in that financial year she received more money than that upon which she has been taxed?

What can be done? The answer seems simple with little or no legislation required as far as the National Assistance Board is concerned.

The National Assistance Board should be given specific power to refuse assistance until a complaint has been made to enforce an order and incidentally such a power would help the board to make a dependant seek an order where a man has not already been made responsible for the dependant's assistance. As well as this power and as an alternative the assistance board should require a dependant who is given weekly assistance to sign an authority for the court to pay to the board the weekly amount of the assistance or the weekly amount of the order, whichever is the smaller, when received from the man. When a dependant is given an order book she should be required, not only to sign over any monies received by the court but to authorize the collecting officer to enforce an order as and when it falls into arrears. When the monthly return is made to the assistance board of monies received by the court under such authorities it would be easy for the collecting officer to issue process when a man is defaulting.

As to income tax, perhaps legislation would be required, but if a man is to claim relief for his maintenance payments then he should only receive it upon production of the court receipts or upon production of a certificate from the court of the actual amount paid. There would be an added advantage if the latter course were adopted, for when the man writes in for his certificate or called for the same, current process could be served or executed upon those who were defaulting and whose address was not known to the court.

Finally it is suggested that if the National Assistance Board were to take more prosecutions under s. 51 of the National Assistance Act, 1948, a lot of public money would be saved.

ADDITIONS TO COMMISSIONS

BRIDGWATER BOROUGH

Cuthbert Paul Staple, Trenino Villa, Wembdon, Somerset.

EAST HAM BOROUGH

Charles Edward Ellett, 120 Halley Road, Forest Gate, E.7.

OXFORD COUNTY

Mrs. Elsie Margaret Emily Beer, Redholme, Thame, Oxon.

John Frederick Gardner, Home Close Farm, Shilton Road, Burford.

Henry Miles Gosling, Stratton Audley Park, Bicester.

Thomas Ralph Leigh, Croftdown, Corn Street, Witney.

Air Commandant Dame Felicity Hyde Peake, W.A.A.F. (retd.), Court Farm, Tackley.

The Hon. Thomas Maurice Ponsonby, The Common, Little Faringdon, Lechlade, Glos.

Miss Gabrielle Margaret Smith, Mead Close, Fulbrook, Burford.

Mrs. Ursula Mary Thomas, Watcombe Corner, Watlington.

Mrs. Jean Penelope Wilson, Graham's Field, Goring-on-Thames, Reading.

ST. ALBANS CITY

Mrs. Joyce Edith Parsons, 3 Marshal's Drive, St. Albans.

Mrs. Brenda Truscott Swinson, Abbey Mill House, St. Albans.

HIC JACET

A problem lately submitted to us must arise constantly in practice, but we find little direct authority upon it. It is the relation between a local authority which has laid a water main under private land and the owner or occupier of the surface of the land. Suppose the water main to have been laid not far below the surface of a pasture, in the days of horse drawn vehicles, with the expectation that nothing heavier than a cow or an ordinary farm cart would ever cross it. The farmer now decides to lay a strip of concrete, to make it easier to run across the field with tractors. Or he does not do so, and begins to cross with a lorry which cuts up the ground, imperilling the main. The problem has to be considered partly under common law and partly in the light of s. 119 of the Public Health Act, 1936, which gives a local authority which supplies water under the Act the same right of providing and maintaining water mains as it would have for providing and maintaining a sewer in another person's land. We shall come back to the exact nature of the rights conferred by s. 119 of the Act of 1936, upon which we have found some misunderstanding. Those rights have to be considered in the light of the judgment of Simonds, J., as he then was, in *Abingdon Corporation* v. *James* (1940) 104 J.P. 197; [1940] 1 All E.R. 446—a difficult decision.

As seen at common law, the problem is the same in relation to sewers and to water mains, and is one aspect, if an unusual aspect, of the relationship between a surface owner and the owner of subterranean property. It is familiar law that the owner of the surface is entitled as of natural right to support from the owner of a subjacent stratum and also to lateral support from the owner of a piece of land beside his own, for what was on the land in its natural state, but that he is not entitled to support for a building put upon it unless he has gained that right by grant or by prescription: *see Dalton* v. *Angus* (1881) 46 J.P. 132, and *Backhouse* v. *Bonomi* (1861) 4 L.T. 574.

The rules of common law about support of the surface were brought to a logical conclusion through a whole series of cases, discussed in *Dalton* v. *Angus*, *supra*, but the common law looked at the matter (so to speak) the right way up. What it dealt with was a right of support, not a right in the plaintiff not to have something put above him.

The local authority which owns a sewer or water main, and indeed the private person who owns a subjacent layer of land containing something valuable such as a tunnel or an electric cable, has the common law rights established by those cases against a person whose property is still lower, in respect of his layer of land in its natural state and in respect of the artificial works he puts into it, subject to the modifications introduced by the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883: *see In re Dudley Corporation* (1881) 46 J.P. 340; *Jary* v. *Barnsley Corporation* (1908) 71 J.P. 468. But the subjacent owner looks also upward—what happens above him is as important as his right of support from below. There is, as it seems to us, this important qualification to be made: the right of support is in its simplest form a natural right, and the case law as it developed in the reign of Queen Victoria was concerned to discover how far the natural right extended to something unnatural, namely a building put upon the surface. In our problem we are dealing with something put underground, which is just as unnatural as a building on the surface. We start therefore from the proposition that *prima facie* a person who goes below someone else's land, either by agreement with that someone or in the exercise of a statutory power, has no right to be protected against activities of the surface owner unless he has bargained for such a right, or obtained it by express statutory provision, or necessary implication therefrom, or has acquired it by prescription—if this last is possible. To this we will return.

We have seen the opinion expressed that the landowner has been compensated for the placing of a sewer in his land and must therefore be assumed to have parted with all rights of doing on his land anything which might be harmful to the sewer. With respect, we think this opinion begs the question of the extent to which the surface owner has parted with his rights. When he receives compensation either on a voluntary transaction or because the local authority have exercised their statutory power under s. 15 of the Act of 1936 to go and put a sewer below the surface of his land, he will not, as we see it, have bargained away his right to cross the line of the sewer with a cart. Such a restriction will never have been in contemplation when the compensation was assessed (if need be, by the Lands Tribunal). The case is otherwise if the sewer is laid above the surface, or if surface works are carried out. These things, in their nature, are an obstacle to his movement from one side to the other, and must therefore have been taken into account in the assessment of compensation. Where a sewer is laid below ground the owner of the surface knows also that, if the local authority considering plans under byelaws and the local authority which owns the sewer are the same, he will have parted with the right of erecting a building over the sewer unless it happens to be allowed under s. 25 of the Act of 1936. For that loss of right he will have been compensated. He knows also that he must allow the local authority owning the sewer a right of access to it, because without this the sewer would be valueless. It was, we think, upon the basis of this right of access rather than any other basis that the decision went in favour of the corporation of Abingdon in the case already cited. In that case, s. 25 of the Act of 1936, or the previous s. 26 of the Public Health Act, 1875, was not directly in question—we do not however, propose to speak further of the *Abingdon* case at this point. We shall come back to it when we are considering the analogy between a sewer and a water main.

Section 15 of the Public Health Act, 1936, gives a local authority providing a sewer a right to go into another man's land against his will, and the same right is conferred by s. 119 of the Act upon a local authority providing a water supply and laying its main by virtue of the powers of the Act. So far so good, but this does not do much towards settling the position of the parties in subsequent years.

These sections, with the statutory provisions which deal with compensation, certainly have this effect, that the owner of the land through which the sewer or the water main is laid receives compensation which enables the local authority to say that he has sold to them certain rights. Amongst these it is easy enough to say that he has been compensated for, and has therefore parted with, the right of doing things upon the surface which at the time when the sewer or water main was laid could be foreseen as injuring the property in the subjacent stratum which he has sold to the local authority, or interfering with whatever rights less than property the local authority has acquired in the subjacent stratum.

Once again, however, this does not take us so far as might be thought at first sight.

It will be convenient to digress here and to consider s. 25 of the Public Health Act, 1936. This has at times been misunderstood in this context. The section gives a local authority which

owns a sewer, if it is also the local authority to which building plans have to be submitted, a right of prohibiting a building above the sewer, subject to an appeal to justices. It does not say that a building above the sewer shall not in any circumstances be erected, and it only applies where the local authority which owns the sewer is also the local authority to which, under the building byelaws in force in the district, plans for the erection of a new building have to be submitted. Where a sewer is laid in another local authority's district, the local authority which has to pass the plans is entitled to disregard the existence of the sewer and indeed it seems that the local authority, even if minded to protect its neighbour's sewer, cannot do so in virtue of that section. Taking the simple case where the local authority which has to pass the plan and the local authority which owns the sewer are the same, it is true that the section provides reasonably full protection. If the local authority agrees to the erection of a building over the sewer it can put the builder and his successors in title upon terms, with a view to making sure that there is no risk of damage to the sewer. It can, for instance, require a special concrete raft, or whatever else is the most suitable form of precaution. The section has, however, nothing to say about what is done by the surface owner short of erecting a building. To take the case previously postulated in regard to a water main, and to apply this to a sewer: suppose the surface owner proposes to lay a concrete road at right angles to the line of the sewer, for the purpose of enabling his lorries to move more conveniently about his land. The local authority is apprehensive of the weight which will thus be put upon the sewer, but it is clear that s. 25, at any rate, gives no power to prevent his doing what he wishes. To suppose that the local authority had such a power would involve going back to fundamentals, by saying that it was entitled to prohibit his crossing the line of the sewer with a farm cart, if there was any danger that by so doing he would injure the sewer, and this is the very thing which we have been trying to assess, in the light of the principles laid down by the Victorian judges at the common law.

And here comes in another rule which was laid down in *Backhouse* v. *Bonomi, supra*. This is that there is no right of action for mere withdrawal of support by a subjacent owner, but only for the results.

If the surface is let down by however little the surface owner has a right of action, although the physical harm done may be negligible or nominal, but he has no right at all until the surface actually sinks. By parity of reasoning, it seems to us that the surface owner may drive his farm carts as long and as often as he pleases over the ground below which there lies a sewer, so long as he does no injury to it. Even if he does injure it we doubt whether, upon the first principles which we have enunciated in this article, the local authority has any right against him at common law. This for the reason that the rights, whatever the local authority's rights may be, are not natural rights comparable with the right of support to the surface: they are acquired and unnatural rights, because the local authority in excavating the subsoil and placing sewers there has done something just as unnatural as erection of a building on the surface. Now if the local authority had erected a building, and wished to rely upon a right of support at common law, they could do so when the building had stood for 20 years, and so they can acquire a right of support for an underground sewer, against the owner of a lower stratum. But this prescriptive right arises because during that 20 years the sewer has been supported in fact by the subjacent stratum. Can they, at the end of that time, have acquired against the surface owner a right parallel to the right of support, namely a right not to have anything done upon the surface which will injure them? We think not, because the acquisition of such a right would—to put the matter in the simplest terms—have meant that the surface owner had never crossed the line of the sewer with a cart. The same must, we think, apply if the surface owner wishes to lay concrete across the surface, although we admit that if he lays concrete over a long stretch of the sewer so as materially to interfere with access a fresh right of a different character comes into play. We shall speak of this in considering *Abingdon Corporation* v. *James, supra*.

Leaving this last contingency aside for the present, the surface owner's right of doing ordinary things upon the surface is not in our opinion impaired by the fact of the local authority's laying a sewer under statutory power, namely s. 15 of the Act of 1936, rather than by agreement. Neither at common law nor by prescription is the consequence different as regards what is done upon the surface, from what it would be if no statutory provision were in question.

Let us now consider the decision in *Abingdon Corporation* v. *James, supra*. Anything said by Lord Simonds, even when he was a Judge of first instance, is to be respected, but in this particular case he did not have to decide whether s. 25 (1) of the Act of 1936 applies to a water main. What he did say was that s. 25 (3) was applied by s. 119: to be precise, he expressed an opinion that this was so, but even this opinion was strictly *obiter*, in as much as he did not have to decide the point, for the reason that the local authority (which in that case had laid the water main and owned it) was not the local authority to whom plans had to be submitted in accordance with the building byelaws in force in the district where the building was erected. The building owner had submitted plans in the ordinary way to the appropriate local authority, which had apparently not considered, as it was not bound to consider, any question of protecting the Abingdon corporation's main. The owner had erected buildings, and in due course these had become the property of the defendant James. What Simonds, J., as he then was, decided was that upon these facts the corporation were entitled to a mandatory injunction, compelling James to pull down the buildings, because in fact these would interfere with their right of access to their water main.

It was argued on behalf of James that the corporation could obtain access to the water main from the ends of the part which went beneath his buildings, but the learned Judge did not consider this a practical suggestion. The decision is a strong one, first because he rejected this suggestion, and secondly because he granted an injunction against a person who, on the facts, seems to have been entirely innocent. James did not necessarily know anything of the existence of the water main beneath the buildings he bought, and if he had known of it he might reasonably have supposed that the buildings, having been lawfully erected by his predecessor in title, whose plans had been passed by the local authority of the district, were not subject to risk at the instance of a different local authority. The existence of the water main, with the rights which the learned Judge decided belonged to the corporation, was an unsuspected peril, and on the face of things the decision seems to have been extremely hard on James. This, however, is beside the legal point. As we have said, the learned Judge was prepared if necessary to hold that s. 25 (3) of the Act of 1936 was applied by s. 119, but this was not really necessary for him to decide, and did not arise. He did not even purport to decide anything about the application of s. 25 (1) to the water main, and we remain of the opinion expressed in answer to P.P. 6 at 122 J.P.N. 278, that, even if the main had been in the district in which it was proposed to erect a building, s. 25 (1) of the Act of 1936 would not have applied to it—this for the reason that the powers given by s. 25 (1) are not powers with respect to " the provision and maintanence " of a sewer.

We may mention also another opinion we have expressed, about water mains and sewers. It has been decided by the courts

that a local authority which lays a sewer under statutory powers acquires something more than an easement: it acquires a right of property in the soil occupied by the sewer: *Taylor* v. *Oldham Corporation* (1876) 35 L.T. 696. We have however said that in our opinion the decisions in this sense apply only to sewers, with the result that the local authority which lays a water main in pursuance of s. 15 as applied by s. 119 of the Act of 1936 is left with an easement only and not with a right of property in the soil occupied by the water main: *see* P.P. 10 at 120 J.P.N. 417. How much difference this makes from the point of view of the protection which the local authority enjoys against a subjacent owner is possibly an academic question, in view of the limitation imposed on the rights attaching to a sewer by the Act of 1883. Nor is it clear how far the difference between property and easement affects the activities of the surface owner. The right of protection for a water main can hardly be higher than the right of protection for a sewer, but the right of the local authority owning a sewer to have access to it from the surface is itself an easement, an easement incidental to its right of property, and we are inclined to think that the right which the *Abingdon* case decided to exist in favour of the local authority which owned a water main whether inside or outside its own area was no more than an easement of access, not essentially involving any restriction on the surface owner's rights. We find nothing to show that a surface owner may not use his land in any ordinary way which does not appreciably interfere with access to the sewer or water main as the case may be. If we are right so far, we should say that laying a water main under statutory powers does not deprive the surface owner of the right to put a road across it at right angles: the effect would be different from that of erecting a building, even if the latter, contrary to our opinion, was affected by ss. 25 and 119 of the Act of 1936.

The compensation which the local authority will have paid will have been calculated upon the surface owner's loss of rights, and will therefore not have included an element attributable to the surface owner's inability to construct a road across the water main. The local authority will have got the land more cheaply on that account, and therefore, if the main is endangered by the increased weight due to putting concrete on the surface, the cost of protecting the main will have to be paid by its owner, and cannot be thrown upon the owner of the surface.

WORDS, WORDS, WORDS

(HAMLET, ACT II, SC. 2)

By EDWARD S. WALKER, D.P.A. (Lond.)

"When I use a word," Humpty Dumpty said in a rather scornful tone, "it means just what I choose it to mean—neither more nor less."

"The question is," said Alice, "whether you *can* make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be Master—that's all."

So wrote Lewis Carroll in 1872, and things do not appear to have altered since, because it is strange that when examining a draft of one's own composition one can find little fault with it: but, if one examines someone else's draft one can (at least so it is thought) always improve it.

This phenomenon is a curious trait of human nature, because it is axiomatic that no two people will say something about the same thing in exactly the same way. Proof of this will be seen in the volumes of precedents which abound in legal offices and clerk's departments, for example, *Key and Elphinstone, Kelly, Prideaux,* and the *Encyclopaedia,* to name only a few which come to mind. And, as a typical example of this, five different minutes of five different local authorities are set out below, all recording differently so simple a matter as the verification by a meeting of the minutes of a preceding meeting:—

(i) That the minutes of the meeting of the council of July 24, 1958, be confirmed as a correct record and signed by the chairman;

(ii) that the minutes of the council meeting held on May 31, 1948, be affirmed as a correct record and signed by the chairman;

(iii) that the minutes of the meeting held on September 10, 1954, having been previously circulated, were taken as read and confirmed and signed;

(iv) that the minutes of the meeting held on March 17, 1958, be confirmed and that they be signed by the chairman;

(v) the minutes of October 7, 1954, were confirmed.

Actually, the use of the word "confirmed" in the context of the submission to a meeting of the minutes of a preceding meeting is incorrect. A meeting asked to "confirm" minutes is simply asked to verify their accuracy as a record: *R.* v. *York* (*Mayor of*) (1853) 1 E. & B. 594. This "confirmation" is a formality and does not invest the subsequent meeting with the power of confirmation of the substance of the resolutions of the previous meeting.

Confirmation in this latter sense is needless, and a refusal to verify the record of what was transacted at a preceding meeting does not detract from its validity and force. Consequently, discussion on a motion to "confirm" minutes must be confined to their accuracy as a record, and not extend to the efficacy or substance of what was resolved, and the minute of affirmation of the minutes of the previous meeting only adds authenticity to the record as evidence.

How then, if no two people say the same thing in the same way, can anyone sit in judgment upon a draft and, if it is grammatically correct, say that this or that would have been better said if it had been said this way or that? Would modern writers re-draft "Nymph, in thy orisons be all my sins remembered" (*Hamlet,* Act II, Sc. 1) to "Miss, do not forget me in your prayers"? Heaven forbid, since a word fitly spoken is like apples of gold in a picture of silver (*Proverbs* (XXV. 11)).

It is inherent in what has been said that some of the validity of the views of some highly esteemed people who propound the use of "basic" English is disputed. It is surely apparent that, if one is to say what one wants in the manner in which one wants to say it, there will only be one collection of words which will exactly suit the person expressing himself, and the choice of these words will, in the nature of things, be dependent upon his personal preference.

Moreover, it is not always true that what one wants to say can best be said by simple words in simple sentences. An onomatopoeic or alliterative effect may be sought, or a particular word may be used in order to add cogency or

draw attention to what has been said. Further, one should strive to use the whole of the vocabulary at one's command (which, ideally, should be all the half-million and more words in the Queen's English!) As Wordsworth had it, one should seek for choice words and measured phrase above the reach of mortal man. (*Independence*, Stanza 14).

Let us hope that next time we look at someone else's draft we remember this.

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Lord Parker, L.J., Donovan and Salmon, JJ.)

ROSS *v.* EVANS

April 17, 1959

Animal—Dog—Suffering ferocious dog to be at large—Lead attached to dog—Physical means of control available, but not exercised—Whether offence committed—Metropolitan Police Act, 1839 (2 *and* 3 *Vict.*, *c.* 47), *s.* 54.

CASE STATED by Middlesex justices.

Two informations were preferred at Harrow magistrates' court by the respondent Evans, a police officer, charging the appellant, Victor Ross, with suffering to be at large an unmuzzled, ferocious dog, contrary to s. 54 of the Metropolitan Police Act, 1839. That section provides: "Every person shall be liable to a penalty not more than 40*s*., who, within the limits of the metropolitan police district, shall, in any thoroughfare or public place, commit any of the following offences . . . (ii) Every person who shall turn loose any horse or cattle, or suffer to be at large any unmuzzled ferocious dog, or set on or urge any dog or other animal to attack, worry, or put in fear any person, horse, or other animal . . ." According to the facts found by the justices, on two occasions (February 16 and March 14, 1958) the appellant took out greyhounds (in one case six or seven and in the other five or six) presumably for exercise. On each occasion he had a master lead which was attached to smaller leads which were, in turn, attached to the dogs. On each occasion one of the dogs jumped up and bit a passer-by. The justices came to the conclusion that, although a person might have control of a dog by some physical means such as a lead, yet, if he did not control the dog, the dog was at large. They convicted and fined the appellant, who appealed.

Held: that an offence was not committed under the section when a person had the physical means of controlling a dog, but did not do so, because in those circumstances, the dog was not "at large," and, therefore, the appeal must be allowed, and the convictions on both charges quashed.

Counsel: *Stephen Stewart*, for the appellant; *Pownall*, for the respondent.

Solicitors: *Darracotts*; *Solicitor, Metropolitan Police*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

YOUNG *v.* DAY

April 15, 1959

Road Traffic—Notice of intended prosecution—Place of offence not sufficiently specified—Four-mile stretch of minor road—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 21.

CASE STATED by Kent justices.

An information was preferred at Ashford magistrates' court by the appellant, Raymond Albert Young, a police officer, charging the respondent, Michael Brian Westbrook Day, with dangerous driving. According to the facts found by the justices, on July 15, 1958, the police sent a notice of intended prosecution to the respondent which stated that they were considering prosecuting him for dangerous driving, among other offences, "on July 6, 1958, at Hothfield to Bethersden Road. It is alleged that whilst motor car No. MKJ 680 was being driven along the Hothfield to Bethersden Road in the direction of Hothfield the driver drove in such a manner that he narrowly avoided colliding with a motor car which was stationary on the offside of the road." The respondent was not warned at the time of the alleged offence nor was the summons issued within the next 14 days. The Hothfield to Bethersden Road was a minor road approximately four miles in length. No accident had occurred, nor was the defendant stopped at the time of or after the alleged offence. The justices were of opinion that the notice was invalid in that it did not sufficiently specify where the offence was alleged to have been committed and dismissed the information. The prosecutor appealed.

Held: that the police could have specified the place of the alleged offence more accurately and that it was impossible to say that there were no facts on which the justices could come to the conclusion to which they came, and, therefore, the appeal must be dismissed.

Counsel: *Durand, Q.C.* and *Ede*, for the appellant; *Collard*, for the respondent.

Solicitors: *Sharpe, Pritchard & Co.*, for *N. K. Cooper*, Maidstone; *Cripps, Harries, Hall & Co.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

NORTH *v.* GERRISH

April 15, 1959

Road Traffic—Failing to stop and give name and address after accident—Name and address given after failure to stop—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 22.

CASE STATED by Oxford justices.

An information was preferred at Oxford magistrates' court by the appellant, Leonard Stanley North, a police officer, charging the respondent, Percy George Gerrish, with failing to stop and give his name and address after an accident, contrary to s. 22 of the Road Traffic Act, 1930, which provides: "If in any case, owing to the presence of a motor vehicle on a road, an accident occurs whereby damage or injury is caused to any person, vehicle or animal, the driver of the motor vehicle shall stop and, if required so to do by any person having reasonable grounds for so requiring, give his name and address, and also the name and address of the owner and identification marks of the vehicle." The justices found that the respondent, having come into collision with another vehicle, did not stop, but went on for over a mile. Ultimately, when stopped and asked for his name and address by an authorized person, he did give the required particulars. The magistrates held that no offence had been committed because they considered that a failure to comply with both requirements was necessary to prove an offence under s. 22. Accordingly, they dismissed the information, and the prosecutor appealed.

Held: that the section created only one offence, and that, if a person stopped, but did not give his name and address, or if he did not stop, but subsequently gave his name and address, the full requirements of the section had been fulfilled, and, therefore, the case must be remitted to the justices with the direction that the offence was proved.

Counsel: *Wellwood*, for the appellant. The respondent did not appear.

Solicitors: *Sharpe, Pritchard & Co.*, for *A. P. M. Nixson*, Oxford.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

R. *v.* BUNGAY JUSTICES. *Ex parte* LONG

April 15, 1959

Licensing—Exemption from closing—General order—Premises in immediate neighbourhood of public market—Discontinuance of actual market—Meetings of farmers on former market day—Business done with commercial travellers—Licensing Act, 1953 (1 *and* 2 *Eliz.* 2, *c.* 46), *s.* 106 (1), (2).

APPLICATION for order of *certiorari*.

Up to 22 years ago there was a market place in Bungay, and, a cattle market was held there on Thursdays, but since then there was only a fruit stall there on Thursdays, a fish stall there every day of the week, a toy stall before Christmas, and occasional stalls for charity. Licencees, however, continued to keep open on Thursdays, the former market day. On August 13, 1958, Ronald Frederick Buck, a new licensee, applied for a general order of exemption under s. 106 of the Licensing Act, 1953, for his licensed premises, the Swan Inn, situated at St. Mary Street, Bungay. The application was opposed by the police, but the justices granted the exemption. They held that there was a public market on the ground that farmers were wont to come into Bungay on Thursday which locally was still called market day, and go into public houses round the market place to do business with each other and commercial travellers, who found it convenient to go there instead of visiting the farms. The applicant, Police Superintendent Arthur Revers Long, obtained leave to apply for an order of *certiorari* to bring up and quash the justices' order.

Section 106 of the Licensing Act, 1953, provides: "(i) Where on application to justices . . . by the holder of a justices' on-licence for premises situated in the immediate neighbourhood of a public market

. . the justices are satisfied of the matters specified in the next following subsection, the justices may grant him [a general order of exemption] applying to the licensed premises, in addition to the permitted hours fixed . . . (ii) Justices shall not grant a general order of exemption unless satisfied, after hearing evidence, that it is desirable to do so for the accommodation of any considerable number of persons attending the public market . . ."

Held: that a meeting of people in public houses could not constitute a public market, nor could the bar of a public house constitute a market place, and, therefore, there was no evidence on which the justices could find that there was a public market, and *certiorari* must issue to quash their general exemption order.

Counsel: *W. M. F. Hudson*, for the applicant. Neither the justices nor the licensee were represented.

Solicitors: *Maude & Tunnicliffe*, for *P. F. Rodwell*, Halesworth.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

REVIEWS

Local Government Forms and Precedents in England and Wales. Second Cumulative Supplement. By A. Norman Schofield. London: Butterworth & Co. (Publishers) Ltd.; Shaw & Sons Ltd. Price 27s. 6d. net.

This supplement is in the usual form; first a noter-up and then a set of fresh precedents dealing with new situations, or in some cases providing an alternative to forms in the original volumes. The supplement represents the joint work of a number of persons prepared under the general advice of the consulting editor, and it comprises some precedents which have reached the publishers from outside sources.

The collection in the main volumes, of local government forms and precedents, has amply proved its value to local government officers, and indirectly has proved of general public benefit in standardizing modes of proceeding by local government authorities which affect the public. The present supplement supersedes one which was issued at the end of 1956, and brings the whole work up to date at the end of the long vacation of 1958.

A Modern Approach to Marriage Counselling. By W. L. Herbert and F. J. Jarvis. London: Methuen & Co., Ltd. Price 10s. 6d. net.

The work of the Marriage Guidance Council has slowly been attracting more attention from socially minded people. It has come to be realized that any constructive activity—and if it is on a voluntary basis, then so much the better—which can stem the appalling statistics of divorce and separation and maintenance orders, is worthy of high public regard.

This book discusses, as far as is possible within the limits which the authors are working, some of the more straightforward aspects of marriage counselling. It is not a book for the profound student of social affairs, nor for the professional sociologist. Probation officers could read it with profit, and we fancy that many justices of the peace would welcome this chance to learn something of the tensions and problems which precede an appearance in court by husband and wife.

One cannot read the book, however, without realizing that only the more superficial matrimonial problems can lend themselves to the popular type of exposition of which this book is an example. The real tensions of the unhappy marriage are far too subtle and too many-stranded to yield to simple analysis or ready solution. In spite of what may be said, and with good reason, about money problems and the like, it remains true, surely, that the fundamental cause of any unhappy marriage is a profound disparity of *temperament;* one partner has a different mental, physical, and spiritual adjustment to life: and as the years succeed each other, with an inevitable story of growth or decay (for human nature *never* stands still) the partners grow further and further apart, and are often as helpless to control the situation as two pieces of driftwood in a swift current.

Apart from this important reservation, we commend this book as a sincere exposition of some of the day-to-day problems confronting those who embark on the desperately tricky game of advising people in their matrimonial problems.

Prisons. By B. K. Bhattacharya. India: S. C. Sarker & Sons (Private) Ltd. Price 25s.

This book takes its origin from a thesis prepared by the author when he was pursuing his Doctorate of Philosphy. A great deal of it is of interest to the student of comparative penology in so far as it gives us much information on the working of the prison system in India and on the relation to that system to Indian criminal law and practice.

It is clear from the detailed information provided in these closely packed chapters that in many respects Indian prison administration is not much further advanced than was our own some 50 years ago. The English magistrate and student will read these chapters with dismay, and with a desire that the conditions recounted in them will be speedily altered, but at least he will be able to say to himself that such a state of affairs no longer obtains in Great Britain.

It is indeed a comfort that the author, who is a Judge of the High Court of Calcutta, regards the English prison system as enlightened and as offering a suitable model for others, though he can see room for improvement yet. One can only hope that the spirit of Commonwealth relations will show itself in rapid spread of enlightened prison and criminal administration beyond our own shores.

Stamp Duties. By F. Nyland. Supplement to Second Edition. London: Butterworth & Co. (Publishers) Ltd. Price 6s. net.

Nyland on Stamp Duties is a particularly useful work to the practising lawyer. Since it appeared in 1957 the rates of stamp duty have been altered for some items by the Finance Act, 1958, and there have been a few important decisions of the courts. There has also been a change in the practice of the revenue, about the stamp duty position where separate contracts have been made, for the conveyance of land and for the erection of a building. It will be desirable and convenient for the practitioner who uses the main work to have this noter-up available showing where large (or even in some cases relatively small) corrections of the text have become necessary.

Principles of Local Government Law. By C. A. Cross. London: Sweet & Maxwell, Ltd. Price 35s. net.

This work sets out to supply a handbook for students of local government law, which will enable them to reason out the answers to typical questions on the basis of the statutes and the cases. The author is a member of the bar and also a town clerk, who has had practical experience in lecturing on local government. For this primary purpose, the method adopted is to set out the law in narrative form, with brief illustrations from important cases illustrating essential propositions. The second purpose in the learned author's mind is to provide those engaged in the day to day work of local government with a guide to general principles, which will be of use to non-specialized officers and will help in solving their administrative problems. Historical matter has been excluded except where it is really necessary—broadly, except where the existing law cannot be understood without explaining how it came into its present form. If some interest is thus taken out of the resulting account, the student is enabled to go directly to the present law, which is what he needs for examination purposes, except when he is specifically asked about its history.

The local government officer, and to some extent the lawyer in private practice who may be concerned with local government functions on a client's behalf, will find the appendices particularly useful. These show in mainly tabular form a great deal of information, about powers and duties of various local authorities, which has for the most part not been collected in other books—although we feel entitled to say that a fair amount of it is to be found in articles published in the *Justice of the Peace and Local Government Review* in the last few years, some of which we have reprinted.

The general design and presentation of the book is excellent, though we are obliged, once more, to make one of our stock complaints, namely about the quite inadequate apparatus of reference to cases. These are given in footnotes to the text with no more than a single reference, and in the table of cases at the beginning of the book with no references at all. We regard this as a serious flaw: students in particular must be taught to look up the judicial basis of legal propositions, and must be given every help towards doing so. Nor can the practitioner spare time to look for a case in some general index, in order to track it into the reports on his own shelves, if given only a reference to some other series. In other respects the book strikes us as excellent for both the purposes for which it is intended.

Gibson's Conveyancing. By R. H. Kersley. Eighteenth Edition. London: Law Notes Lending Library Ltd. Price £4 net.

For a great many years this book has in previous editions been recognized as valuable, to students reading for honours in the professional examinations, and also as the sort of book which, after they have qualified, they will keep at hand for reference when dealing with the affairs of clients. It was, we believe, originally planned by a well known tutor and it still retains the clarity of arrangement and simplicity of expression needed for a student's book. It is, however, a good deal more than this. The chapter (for instance) headed Inquiries before Contract contains advanced matter about planning restrictions, and the Rent Restriction Acts and similar enactments, which are of more importance in practice than in the examination room. In this part of the book and also elsewhere, the learned editor has added to its value by footnotes informing the reader about articles in the legal periodicals where particular questions are discussed, and conclusions may have been reached which are different from his own.

In the six and a half years since the seventeenth edition was published, conveyancing practice has been affected by changes in the law, and by Town and Country Planning Acts—nor do these exhaust the list of statutes which have involved greater or less alteration of the text. There has also been the suprising number of 450 new decisions. Notwithstanding the complications ot the subject, the learned editor has managed to explain it in a way which any honours students can understand and has, so far as we can find, also included as full information as will be usually needed in the course of daily practice.

THE WEEK IN PARLIAMENT

By J. W. Murray, Our Lobby Correspondent

STREET OFFENCES BILL

Before the Street Offences Bill received its Third Reading in the Commons, a new clause was introduced by the government. This provides for the right of a woman cautioned for loitering to apply to a court.

The clause reads as follows: (i) Where a woman is cautioned by a constable, in respect of her conduct in a street or public place, that if she persists in such conduct it may result in her being charged with an offence under s. 1 of this Act, she may not later than 14 clear days afterwards apply to a magistrates' court for an order directing that there is to be no entry made in respect of that caution in any record maintained by the police of those so cautioned and that any such entry already made is to be expunged; and the court shall make the order unless satisfied that on the occasion when she was cautioned she was loitering or soliciting in a street or public place for the purposes of prostitution. (ii) An application under this section shall be by way of complaint against the chief officer of police for the area in which the woman is cautioned or against such officer of police as he may designate for the purpose in relation to that area or any part of it; and, subject to any provision to the contrary in rules made under s. 15 of the Justices of the Peace Act, 1949, on the hearing of any such complaint the procedure shall be the same as if it were a complaint by the police officer against the woman, except that this shall not affect the operation of ss. 47 to 49 of the Magistrates' Courts Act, 1952 (which relate to the non-attendance of the parties to a complaint). (iii) In this section references to a street shall be construed in accordance with subs. 4 of s. 1 of this Act."

Moving the new clause, the Attorney-General, Sir Reginald Manningham-Buller, said that during the committee stage of the Bill, considerable fears were expressed about the position of a respectable woman who was wrongly cautioned, and he undertook to consider very carefully the various suggestions made to see whether some way could be found of giving such a woman a legal right of redress.

Under the new clause, a woman who was cautioned by a police constable would be entitled as a matter of legal right to apply within 14 days for an order from the magistrate that her name should not be entered in, or, if already entered in, should be expunged from, any police records of those cautions. If she did so apply for such an order the matter would go before the magistrate. Under the clause the burden of proof would be upon the police. If, and only if, the police satisfied the magistrate that she was loitering or soliciting for the purposes of prostitution would an order expunging her name from the records or ordering that it should not be entered not be made.

He suggested that the chances of the police making a mistake were small, but one could not exclude the possibility of error. He hoped, however, that should a mistake be made in cautioning, the exercise of the right of access to the courts would be the last resort, because the sensible woman, if she were wrongly cautioned, ought to go immediately to the police station and make a complaint. That complaint would be investigated, and if the officer in charge of the police station came to the conclusion that an error had been made there would be no entry in any register or police records of the fact that she had been cautioned.

But if she did not receive satisfaction at the police station, in London she would be able and ought to make a complaint without delay to the commissioner of police, and he was authorized to say that the commissioner was very ready indeed to investigate any such complaints as were brought to his notice about the cautioning system. He suggested that any sensible woman who thought she had been wrongly cautioned would take such steps, but after that, should the police adhere to the view that what the police constable did out in the street or public place was justified, then the new clause would give her right of demanding a judicial determination of the question of fact whether she was or she was not loitering or soliciting on the occasion for the purpose of prostitution.

The Attorney-General went on to say that one question which troubled them in relation to the new clause was whether the proceedings should be in public or not when a woman sought access to the courts. On the one hand, it could be argued that if the police had made a mistake or had misconducted themselves in cautioning someone it was right that that error should be made public and not covered up. There could be disadvantages which followed from investigation of police activities in private. That was an argument on one side, and it was one which merited serious consideration.

On the other side, there was the argument that the fear of publicity might deter a respectable woman from seeking access to the courts. An Opposition amendment, which the Government were prepared to accept, provided a satisfactory compromise. Under this, if a woman felt so confident that she had been wrongly cautioned and so aggrieved by the conduct of the police, she might wish the proceedings to be in public. If so, they would be. The decision would rest with her. If, on the other hand, she did not ask for them to be in public, then they would be *in camera*, and then the failure of her application to the court would not result in her receiving any publicity. It would not be known that she had been cautioned for that offence. It would not be publicly known in respect of the other persons cautioned and, therefore, she would not, because she had had recourse to the courts, be singled out as one of those who had been cautioned.

Asked about records, the Attorney-General said there would be a record made at the police station to which the policeman was attached. That was where the first entry would be made, and he imagined it would also be made in his notebook. There would be a central register in London, for obvious reasons. They were police documents and police documents only and he understood that after a year the documents were destroyed. He did not think there need be too much worry about the matter. Cautioning to a limited degree, *i.e.*, namely, one caution instead of two had been in operation in London for a considerable time, and he understood that it did not apply only to London. He had never heard a complaint or criticism of publicity being given to the content of what was recorded. Obviously, records had to be made somewhere if they were to ensure that persons received two cautions before they were prosecuted.

The new clause and the amendment were approved.

On Third Reading, Mr. A. Greenwood (Rossendale) said that he regarded it as a thoroughly bad Bill. It was a Bill to which many religious leaders were strongly opposed and to which the Church of England Moral Welfare Council expressed the strongest opposition.

The Bill was a vicious piece of sex legislation. First, they objected to the retention of the term "common prostitute" because it imported a note of prejudice into any proceedings

against those women. Any magistrate who knew that a woman had already had two cautions was going to start with a bias against the defendant. They believed, further, that retaining the term "common prostitute" retained the double moral standard between men and women to which Josephine Butler was so strongly opposed. It penalized the women and did absolutely nothing to prevent the activities of those men who at present were making the streets a disgrace by pestering wives and daughters. They resented the dropping of the provisions relating to annoyance, and they deplored the fact that in future it would be possible to send women to prison for three months. The test of a democracy was the way in which it treated its minorities. The more depressed and weak the minorities might be the more important it was that they should preserve the highest traditions of the country in treating them equally before the law. Burke wrote to Fox nearly 200 years ago: "People crushed by law have no hope but power. If laws are their enemies, they will be enemies to laws." He believed that that was what the government were doing in those circumstances, and that, far from redeeming the women, the tendency of the legislation would be to drive them further along the road to degradation.

The Secretary of State for the Home Department, Mr. R. A. Butler, said he did not think that either the Bill or the findings of the Wolfenden Committee completely solved the moral issue but they dealt with the practical aspects of the problem.

The women with whom they were having to deal were those making very considerable fortunes per week. They were not dealing with the poor, pushed out by the circumstances of a capitalist society to earn their living by prostitution.

On a division, the Bill was read a third time by 131 to 25 votes. It now awaits consideration by the Lords.

PROTECTION OF CHILDREN

At question time in the Commons, Mr. C. Osborne (Louth) asked the Secretary of State if he would organize a police campaign in the Metropolis for the greater protection of children, similar to that carried out by the Metropolitan Police for the safe guarding of personal property in offices; and if he would call especially for the notification by the public to the police of all adults behaving suspiciously near children's playgrounds.

Mr. Butler replied that the public were already advised to tell the police of any suspicious acts. The Commissioner of Police was considering whether any special measures of the kind suggested would be likely to be useful.

PERSONALIA

APPOINTMENTS

Mr. E. J. Andrews, M.A. (Cantab.), LL.B., has been appointed senior assistant solicitor in the town clerk's department of Hove, Sussex, borough council. Mr. Andrews was formerly assistant solicitor with the borough of Shrewsbury and served his articles with Mr. E. L. Twycross, town clerk of Smethwick. Mr. Andrews succeeds Mr. D. B. Harrison, LL.B., now second assistant solicitor to Norwich city council.

Detective chief superintendent W. J. Richards, of Birmingham has been appointed deputy chief constable for Manchester. He joined the Birmingham police force in 1934.

Superintendent N. Watson, of Nottingham city police, has been appointed assistant chief constable of Liverpool.

Mr. John William Elsden, 38 years of age, at present an inspector with the N.S.P.C.C. at St. Helens has been appointed a probation officer to serve the Lancashire (No. 14) probation area.

Mr. R. W. Greig has been appointed a whole-time probation officer in the London probation service. Mr. Greig served as a temporary officer in London from July, 1957 to September, 1958, before taking the Home Office course.

Mr. E. Hasler, formerly Home Office trainee has been appointed a probation officer in the Middlesex area and takes up his duties on May 1, 1959.

Mr. Thomas Lewis Brimelow has been appointed a full-time probation officer for the city of Salford. Mr. Brimelow has been appointed as an additional officer.

Mr. E. Dyke, who was appointed a probation officer for Doncaster in the West Riding of Yorkshire probation area in October, 1944, has been appointed senior probation officer to succeed Mr. B. Lindsay, who retired on April 5, last, after occupying the post of senior probation officer at Doncaster for nearly 31 years.

RETIREMENTS AND RESIGNATIONS

Mr. Frederick William Beney, Q.C., recorder of Norwich, has retired at the age of 75. He will continue in private practice. He was called to the bar by the Inner Temple in 1909, being made a bencher in 1948. He took silk in 1943 and was appointed recorder of Norwich in the following year.

(At 123 J.P.N. 271, we regret that we inadvertently gave Mr. Beney's position as "recorder of Hastings," when we mentioned wrongly that this note of his retirement had appeared in the previous week's issue.)

OBITUARY

Mr. Harold Grantham, for past 20 years clerk of the Northwich urban district council, Cheshire, has died at the age of 50.

Mr. Phillips E. Wilks, a former clerk to Coventry magistrates, has died.

Mr. James Neville Gray, Q.C., chairman of Hertfordshire quarter sessions, has died at the age of 74.

Mr. Harry Edward Davies, town clerk of Maidenhead from 1908 to 1914, has died at the age of 82.

CORRECTION

Mr. D. J. M. Mackenzie will not now take up the position of assistant secretary to Wales and Monmouthshire Industrial Estates Ltd., as announced in our issue of April 4, last, as he has taken up a position elsewhere.

DIAL 999

"M.O.A.I. doth sway my life." So reads the last line of the false cryptogram in the forged letter, to the solution of which Malvolio devotes so much misplaced ingenuity, in the Second Act of Shakespeare's *Twelfth Night*. It is a tragi-comic situation. Malvolio, faithful steward to the Lady Olivia, is puffed up with a sense of his own importance; his vanity and arrogance have antagonized his fellow-servants, Maria and Fabian, and infuriated Olivia's uncle, the rollicking, frolicsome, hard-drinking, hard-swearing Sir Toby Belch. They put their heads together to make a fool of Malvolio; Maria drops in his way a letter, in what looks like Olivia's handwriting, mysteriously hinting that Olivia, the great lady, is in love with her own steward. Then come the four lines of verse, ending—

"M.O.A.I. doth sway my life."

The poor wretch is puzzled, as he was meant to be.

"What should that alphabetical position portend ?
. . . M,—Malvolio; why, that begins my name!
. . . But then there is no consonancy in the sequel;
that suffers under probation; A should follow, but O does."

"And O shall end, I hope," mutters Fabian, as he and his friends watch, from their hiding-place, a Malvolio caught in the snares of his own high hopes, toiling to read sense into a senseless, bewildering enigma.

The scene is frustrating, not only for the victim of the plot, but also for the audience that waits for it to unravel—and knows it waits in vain. For there is surely nothing so tormenting to the intelligence, so vexatious to the inquiring spirit, than a riddle without an answer, a story without an ending, a lock without a key. That alone, without the gross indignity he has to bear, the cruel disappointment he is made to suffer, is the real outrage; that is what makes Malvolio,

in Shakespeare's gayest comedy, a tragic and pathetic figure. Any writer of detective fiction who employed this device, that Shakespeare uses to such effect, would find his fan-mail change abruptly into a stream of abusive letters, accusing him of cheating.

Few of us have been through Malvolio's harassing experience; but for the past 31 years, or so our lives have been swayed, not by "M.O.A.I.", but by "O" and "TRU" and "TOL." "O" for Operator, "TRU" for Trunk-lines, and "TOL" for Toll-calls, have impinged upon our consciousness ever since the first automatic telephone exchange was opened at Holborn, London, W.C.1, in 1928. Since that year use has become second nature. Now the firmament is rocking over our heads; *terra firma* is quaking beneath our feet; for all has been changed in the twinkling of an eye. Since April 13 those creatures of habit who still dial "O," "TRU," or "TOL" are automatically put through to a recorded announcement austerely reminding them of the substitution. for these familiar symbols of their generation, of the colourless cipher "100." With that maddeningly unintelligible omniscience to which all technological experts are prone, the pundits of the Postmaster General's Department merely tell us that "the change is being made because the code O is needed to give subscribers access to the group-routing and charging equipment (nicknamed 'Grace') of the subscriber trunk dialling system, which is to operate in the London area from 1961." That may well be so; but it is sad that the suave voice of "O," asking so politely "Can I help you?" or giving us an early morning call ("6.30, Madam. *Good* morning!") will no longer be a familiar institution in our lives.

Although we cannot pretend to understand the technical aspect of the change, we suppose that the reasons behind it are similar to those which induced the draftsmen of the Law of Property Act, 1925, to provide that the grant of a mortgage should confer upon the mortgagee a term of 3,000 years, determinable when the loan was repaid. Or perhaps it is a kind of abbreviation similar to that which lawyers employ in the phrase *fi. fa.*—shorthand for *fieri facias*—in executing a civil judgment. In any case it is a pity to see the old familiar figures disappear.

Twelfth Night was first performed about 1600. Shakespeare must have known all about cryptograms, ciphers and codes, for the standard work on the subject had been published in 1516, by John Trithemius, Abbot of Spanheim. That learned gentleman, however, merely collected the lore that had come down to his generation from the past 3,000 years or so. The art of cryptography is of very ancient origin, and instances are to be found in the prophetic books of the Old Testament, depending on the simple expedient of substituting one Hebrew consonant for another, in order to disguise a well-known name, and in the Rabbinical Treatises of the early years of our era. Julius Caesar is said to have employed the same method in his military despatches; and the historian Polybius (250 B.C.) has described various codes in force among the Spartans and other communities of Ancient Greece. There is nothing new under the sun; those institutions had much in common with the code names for military exercises or operations with which servicemen have become familiar during and since the Second World War.

These codes and ciphers are perhaps a different kettle of fish from cryptograms proper. The best known historical use of the two former is in the Diary of Samuel Pepys. The master of the cryptogram in modern times is undoubtedly Edgar Allen Poe, who uses an impressive example in *The Gold Bug*, and is responsible for a pronouncement to the effect that there is no puzzle of the kind that human ingenuity can devise to which human ingenuity is incapable of finding the solution. Arthur Conan Doyle employed the device in *The Missing Three-Quarter*, one of the less well-known of the adventures recorded in *The Casebook of Sherlock Holmes*. But the most ingenious example we have come across, in a story of eerie atmosphere and horrific suspense, is to be found in *The Treasure of Abbot Thomas*, one of the most impressive achievements of M. R. James, the late Provost of Eton, in *Ghost Stories of an Antiquary*.

No survey of this kind would be complete without a mention of the most famous *unintentional* cryptogram in history—the Rosetta Stone. It was a lucky accident that the inscription on this archaeological find was in three different versions—Egyptian Hieraglyphics, Egyptian Demotic and Classical Greek—and thus enabled scholars, by a brilliant piece of detective work and painstaking deduction, to ascertain the significance of the formerly indecipherable hieroglyphic signs and, ultimately, to formulate a complete grammar and syntax of the Ancient Egyptian language. From Jeremiah to the Rosetta Stone; from the cabalistic Hebraists to Pepys; from Poe to Conan Doyle; from M. R. James to the Telephone System and the Second World War—the historical links are complete. Only the great William Shakespeare stands aside; and not *Twelfth Night* alone, nor the mysterious "Mr. W. H." nor the Dark Lady of the *Sonnets*, constitute the only close-kept secret of one whose whole life and personality are still one big unsolved enigma. The dialling system of the Telephone Service, technologically ingenious as it appears, is in comparison simplicity itself. **A.L.P.**

MAGISTERIAL MAXIM. No. XXXVI

A Wise Man of Old, at whose Feet once sat the Slave who in his Wattle Hut, by Rushlight, indites these Worthless and Totally Inadequate Maxims, once declared "FESTINA CELERITAS" which a profane Passer-by interpreted as "Make it Snappy."

Thus and Thus, long Years afterwards, he who Writes, had, when sitting oft-times in a Magisterial Court, perforce to Listen to the Flowery Advocacy of one who was Never Content to tell a Simple Story but must needs Embellish it with many Illustration and Adage, turning so oft Aside from what was the Main Point that, entranced as were his Hearers by his Oratory, they invariably forgot what Exactly he was Getting At. When those Hearers were Justices discharging their Official Duties the Results, though Most Gratifying to the Press, were frequently Disastrous to the Prisoner.

On one such Occasion the Seat of the Chairman was occupied by one who in his Youth had been Engaged in the Difficult Task of imparting a knowledge of the Classics to the unwilling Offspring of Men of Wealth in a Hall of Learning.

At the Conclusion of the Sitting he could not Resist the Temptation of sending his Slave with a note to the Advocate bearing the words of Terentius Phormio, "NIHIL EST, ADVOCATE, QUIN MALE NARRANDO POSSIT DEPRAVARIER," the precise English rendering of which is "No Story so good, o, Pleader but can be spoilt in the telling," but which may be more tellingly rendered as "Give 'em the facts—though Magistrates they're not Mugs."

The Advocate, being as one would Expect, a man of some Good Humour took the Hint to Heart, and by an Alchemy of Mind transmuted his Golden Tongue to one of Simple Pewter, though next time he appeared in that Court he could not Resist the temptation of quoting Cicero (somewhat adapted) by saying "NIHIL TAM ABSURDE DICI POTEST QUOD NON DICATUR AB ALIQUO MAGISTRORUM" which the Chairman instantly and accurately construed as "There is nothing too foolish for a Magistrate to utter."

With equal Good Temper he answered "SILENTUM AURUM EST" which may again be Expounded, in its most Liberal sense as meaning "A SILENT BENCH MEANS OFT WHITE GLOVES FOR THE DIVISIONAL COURT."

AESOP II.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Conveyancing—*Covenants—Adjoining owners.*

A and B are the owners in fee simple of two adjoining plots of land which form part of an estate laid out as a whole some years ago. A in his conveyance covenanted to observe and perform the stipulations and restrictions contained in a conveyance of 1924, the material part of which required A's predecessor in title as purchaser to erect and maintain a fence between the plot of land owned by A and that now owned by B. B in his conveyance covenanted similarly in respect of the fence separating his plot of land from C adjoining him on the other side. A now removes the fence between the plot owned by him and that owned by B without the agreement of B.

Can B require A to reinstate the fence and maintain it? What cases, if any, have been decided on this point. A.F.B.C.

Answer.

The original conveyances to A's and B's predecessors in title must be looked at, but on the information given we think B can enforce A's covenant. The classical exposition is by Parker, J., in *Elliston* v. *Reacher* (1908) 99 L.T. 364, affirmed at p. 701, as extended by Greene, M.R., in *White* v. *Bijou Mansions, Ltd.* [1938] 1 All E.R. 546.

2.—Criminal Law—*Larceny Act,* 1916, *s.* 1—*Loser who believes he has been cheated takes money back—Claim of right.*

A and B play cards. B wins £10 from A and puts this into his pocket. A fully believes that B has won the £10 dishonestly by cheating and takes the money back from B. In actual fact the money was won legitimately. Is any offence committed by A?

One opinion put forward is that as A believed the £10 was won from him by means of a trick, he did not part with ownership and fully believed he had a claim of right to the £10, consequently he committed no offence. FRORIC.

Answer.

These facts were the substance of the Canadian case *R.* v. *Ford* (1907) 12 Canada Cr. Cas. 555, where they were held not to amount to larceny or robbery if the defendant *bona fide* believed that he had been cheated. This decision would not be conclusive in this country but, in the absence of a comparable English authority, it would be highly persuasive and, in our opinion, A could successfully put forward a claim of right if he were prosecuted.

3.—Criminal Law—*Recognizance at police station under s.* 38 (2) *of the Magistrates' Courts Act,* 1952—*Renewal when inquiries not completed by the time the person surrenders.*

The incident related below recently occurred here and there is considerable divergence of opinion as to the correct procedure.

A dock labourer was seen leaving a ship in the process of being loaded, carrying a new mackintosh of army type. Challenged by a constable he said that he had bought it from a shop which sells Government surplus stores, but later changed the story to one that a man had thrown it over his shoulder. Inquiries could not be completed aboard the ship and he was released on a £5 recognizance under the above section for a period of two days.

Subsequent inquiries revealed that the mackintosh had been loaded into the ship in Glasgow and the particular cargo was now overstowed. This information was only received on the day the man was due to surrender to his bail and as further inquiries had to be made by letter to Glasgow instructions were given that when the man appeared at the station the bail was to be renewed for one week. It was the opinion of the officer in charge of the station that the man by surrendering to his bail became "in custody" again.

It is now argued that this was improper and that once he had appeared at the station at the termination of the original bail, he should have been sent away and told that he would be contacted later when inquiries were completed. It is contended that no power is given to require a person to enter into a recognizance a second time under this section.

Would you be so kind as to give your opinion and intimate if such opinion is supported by any legal authority?

J. ELJAY.

Answer.

On the whole we think that the words "on a person's *being taken into custody without warrant*" combined with words "the inquiry into the case *cannot be completed forthwith*" imply that the power to require recognizances can be exercised only on the occasion when the person is first brought to a police station in custody without warrant.

We know of no authority on this point, but we note that in s. 105 (2) of the same Act specific power is given further to remand a person who has appeared on remand before a court.

4.—Highway—*Public footpath—Permission to erect building which will overhang the footpath.*

Application has been made to the council for permission to erect a building immediately adjacent to the public footpath in a street, in such a manner that the first floor of the building will overhang the footpath by several feet. The overhanging section of the building will not obstruct the normal use of the footpath. Has the council as highway authority or otherwise power to approve development that will overhang a public footpath?

PETOWA.

Answer.

Yes, in our opinion, since the building will not cause an obstruction.

5.—Husband and Wife—*Allocation of sums paid after sentence of imprisonment for arrears—Maintenance Orders Act,* 1958, *s.* 16.

A maintenance order requires B to pay a weekly sum of £3. Arrears amounting to £30 accumulate and B is committed to prison for six weeks and duly serves that term of imprisonment in default of payment. During the seven weeks following his release from prison B makes payments amounting in all to £5. Should these payments be allocated against the £30 arrears in respect of which B has served imprisonment (since by the Act such arrears are not cancelled by imprisonment although B cannot be imprisoned a second time in respect thereof) or ought the payments to be allocated towards payment of the amount which has accrued since his release?

GALFOR.

Answer.

The substituted s. 74 (8) of the Magistrates' Courts Act, 1952, provides that imprisonment does not discharge the defendant from his liability to pay the sum in respect of which the warrant was issued and it would seem that the only possible way in which effect can be given to that subsection is to apply any sums subsequently paid towards the discharge of the arrears in respect of which the man has already served imprisonment. We are therefore driven to the somewhat reluctant conclusion that the £5 in this case must be applied to the reduction of the original sum of £30.

6.—Husband and Wife—*Unclaimed periodical payments—Should collecting officer inform husband and return amount held?*

On June 7, 1952, Mrs. A obtained a maintenance order against her husband on the ground of desertion and the husband was ordered to pay the sum of 30*s.* per week for the wife and 10*s.* per week in respect of each of two children, making a total order of £2 10*s.* per week. Payments under the order have been sent by me to the wife but since July, 1958, I have received no communication from her whatsoever. I have now a considerable sum of money in hand for her, but inquiries made at her previous addresses and through her employers and the Ministry of Pensions and National Insurance have all proved unsuccessful.

Do you consider that I should continue to accept payments from the husband on behalf of the wife or that I should inform the husband of the present position and if he so requests, return the amount which I have already received?

H. VEFRO.

Answer.

We think it would be proper to inform the husband of the position provided it is made clear that if the wife appears to claim the money he would be liable for any arrears which have accrued.

With regard to returning the money now held, the clerk would do so at his peril but he could insist on a sufficient indemnity. The question of unclaimed periodical payments is the subject of an article at 110 J.P.N. 378, and we respectfully agree with the conclusions in its last paragraph.

7.—Landlord and Tenant—*Unauthorized fixtures.*

It is customary for a technical officer of the council (the landlord) to survey and inspect accommodation immediately before or after vacation by the tenant. Occasionally he finds unauthorized fixtures on the premises. Clause 6 of the conditions of tenancy reads "The tenant shall not do or allow to be done any works, installations or alterations to the dwelling without the consent in writing of the council."

1. Is the effect of cl. 6 to recognize as landlord's fixtures only those installed with the approval of the landlord ?
2. Do you agree that the correct procedure is for the council to remove the offending fixture, make good any structural damage in so doing, return the fixture to the outgoing tenant, and if necessary sue for damages for breach of contract ?
3. Would the council be entitled to take possession of an undisturbed unauthorized fixture on the principle "anything fixed to the freehold becomes part of the freehold" ?
4. Do you regard as a landlord's fixture a multi-point gas water heater provided by the tenant ?

BEWCAS.

Answer.

1. Upon the voluminous cases, this is not the test.
2. It is not necessary to return the fixture to the ex-tenant, if it has truly become a landlord's fixture. The council can leave it *in situ* if they wish, or remove it and dispose of it, as they could leave or dispose of a fixture placed by themselves. If they think it worth while to sue the ex-tenant, they must be prepared to mitigate damages, by crediting him with the value of the fixture if they keep it or dispose of it, or by returning it to him.
3. Yes.
4. Not during the tenancy, but it will become a landlord's fixture if the tenant does not remove it before the tenancy ends.

8.—Licensing—*Registered club on licensed premises.*

I have recently had to consider the question of a registered club on licensed premises. The premises concerned have been granted a licence restricted to the sale of intoxicants to residents and persons taking *bona fide* meals. This licence is awaiting confirmation.

The licence holder now wishes to run a club on the same premises with a dispense situated between the club room, which on the licensing applications was shown as a lounge, and the dining room. I have referred to your P.P. 4 at 109 J.P.N. 58 and there are two points about that answer which I shall be grateful if you would clarify.

The first is that you suggest the club room might be a place of public resort within the meaning of the Act. With respect I find it difficult to invisage club premises as being a place of public resort since if properly run, only members and their guests could enter. The second point on which I should like your valuable opinion is whether you consider the conditions attached to the licence awaiting confirmation would govern the activities of the club. In the answer referred to you say "if the effect of registration is that the rooms used by the club cease to be part of the licensed premises." I find it a little difficult to appreciate why registration should have this effect, but in your previous answer at least you suggest that if this is not so the club could only operate for six days. The solicitors concerned are seeking to differentiate between permitted hours and other conditions attached to a licence and I should be grateful to have your views generally.

I appreciate of course that it is strictly no part of my duty to query the registration of a club, but the solicitors have asked for my views on the suggested registration.

NOKOR.

Answer.

Presented as a practical point, this is an embarrassing question. We can do no other than point out that the Licensing Act, 1933, says nothing expressly forbidding the registration of a club on licensed premises; and, so far as we are aware, the matter has never been tested in the High Court.

We are, therefore, compelled to take refuge in a statement that the law relating to club registration is so extremely vague on these points that no authoritative answer may be given.

9.—Magistrates—*Enforcement of planning notices—Joint owners Estoppel of single owner.*

Enforcement proceedings are taken against A under s. 24 of the Town and Country Planning Act, 1947. At the hearing A proves that the land in question was owned jointly by himself and three other members of his family, who were using the land and trading together as A and Co. The enforcement notice was however served on A only as owner, and it is submitted by A that because of this the notice is invalid and the case should be dismissed, particularly as there is power under s. 106 of the Act to obtain full information concerning ownership. For the council it is submitted that service on one of partnership owners is sufficient and further that A is estopped from denying that he is the owner within the meaning of the Act on the ground that:

(*a*) A alone had applied for planning permission before the service of the enforcement notice and at a subsequent inquiry stated that he was the owner;

(*b*) A had appealed to the court under s. 23 (4) of the Act describing himself in his complaint as the owner.

In my view estoppel does not apply, this being a criminal proceeding, and it appears to me that the notice should have been served on all members of the partnership as owners and occupiers.

I should be obliged for your opinion on the following points:

1. Is A estopped from denying that he is the owner within the meaning of the Act?
2. Is the notice invalid as not being served on all the owners?

CILKOR.

Answer.

1. We think not. The arguments and judgments in *Pierson* v. *Altrincham Urban District Council* (1917) 81 J.P. 149 may be helpful.
2. Yes, in our opinion: *see Nalder* v. *Ilford Corporation* (1950) 114 J.P. 594; [1950] 2 All E.R. 903, where two owners were involved in regard to structures (iv) and (v), and it was held that both must be served. *Compare* P.P. 5 at 118 J.P.N. 788 about summonses, and two P.P.s about notices of a different type at 117 J.P.N. 308; 119 J.P.N. 354.

10.—Parish Councils Act, 1957—*Lighting powers—Parish meeting—Part of parish.*

Under the Lighting and Watching Act, 1833, the provisions of the Act as to lighting might be adopted for part only of a parish by a parish meeting held for that part. The Lighting and Watching Act, 1833, was repealed by the Parish Councils Act, 1957, and by s. 3 (3) of the latter Act it is provided that the lighting provisions contained in subs. (1) may be adopted (*a*) in every parish for which it is adopted by a parish meeting and (*b*) in every part of a parish for which it is adopted by a parish meeting which, apart from that section, is authorized or required to be held for that part. As s. 7 (4) of the Local Government Act, 1894, provides that where there is power to adopt any of the adoptive Acts for a part only of a rural parish the Act may be adopted by a parish meeting held for that part, I shall be pleased to know if in your opinion I am correct in my contention that the lighting provisions of the 1957 Act may be adopted not only for a whole parish or a ward of a parish but also for a part of a parish, be it a part of a parish without wards or part of a ward of a parish—that is to say that there has been no change in the law in this respect.

ELSIAR.

Answer.

We agree.

11.—Public Health Act, 1936—*Connexion of house drains to private sewer—Mistake by inspector—Liability of council.*

A new private estate was being developed in the area of the rural district council, consisting of the construction of roads and sewers. The plots fronting on the road were afterwards sold and the new owners had houses erected. The builder of one house served notice on the council's surveyor for the inspection of drains under the building byelaws before they were covered. The surveyor sent his inspector to make the necessary inspection and he found that the length in question was a foul drain connexion to the new private sewer in the road, that the pipes were watertight, and the materials used complied with the council's byelaws. The drain was then covered up and in due course the house was completed.

About 18 months afterwards the contractors engaged on the construction of the private road found that the house drains had inadvertently been connected to the private road drainage system and not to the foul water sewer. The builder had mistaken the pipes. The owner of the house now claims that the council should be responsible for making good the drainage, in view of the inspection made by the inspector; that the council have been negligent and did not satisfy themselves that the system was satisfactory, and that accordingly the house owner would hold the council responsible for damage and inconvenience he has suffered and will suffer, through their negligence, and assesses general damages at £150. The surveyor has contended that such inspections are made for the information of the council in regard to compliance with their byelaws, and cannot be made the basis for any claim against the council.

The owner further contends that whether or not an inspection was made the council is under a duty to the public to be satisfied that the drainage system is satisfactory before issuing a certificate of habitation. Although the owner refers to a certificate of habitation, it is not the practice of the council to issue such certificates, and in this case it has never issued one.

The council would be glad to be advised as to their liability. At present, the sewer is private, as is also the road drain in the private street. The council would take them over if application were made, but no application has been made. The council are not seeking to have the drains altered.

POCKIL.

Answer.

In our opinion, the owner has no right of action against the council. If, with an eye to the future, he wishes to have the builder's mistake put right, the council are not involved in the question of liability, which arises between him and the builder. We note that the council do not think it necessary to do anything at present.

If at some later date they receive an application under s. 17 of the Public Health Act, 1936, to take over the sewers, subs. (4) (*a*) of that section will entitle them to consider the mistaken connexion of the house drain. It will be for the Minister in case of dispute to say whether the mistake must, as a condition of vesting, be put right, and if so whether this must be done at the council's expense, having in mind the oversight by their official. If the matter is not raised in connexion with s. 17 (if and when there is an application thereunder), *i.e.*, if the council agree under that section to take over the sewers as they stand, it will still be possible to correct the mistake afterwards under s. 22, but it will then have to be done at the council's expense.

Their immediate course seems clear: they can deny all liability at present; leave the connexions as they are; await an application under s. 17, and at that stage consider the position. Meantime, we note that the council do not issue (purported) certificates of habitation. They are right not to do so. There is no legal basis for such certificates, and the present query illustrates the sort of complication which might arise, in the public mind, if they were to issue them.

12.—Road Traffic Acts—*Mobile caravan—Fitted with bed, sink, wardrobe, toilet etc.—Are these part of unladen weight, or goods or burden?—Speed limit?*

You will no doubt be aware that self-propelled motor caravans are very much in evidence today. These vehicles appear on the market and are exposed for sale free of purchase tax.

The original construction of the chassis is for either (*a*) a goods carrying vehicle; or (*b*) a passenger carrying vehicle for 12 persons. The chassis are taken from the manufacturers on trade plates to another firm, where they are built as mobile caravans.

You will no doubt agree that a goods vehicle is defined as a vehicle constructed or adapted for use for the conveyance of goods or burden of any description (the usual exemption for dual purpose vehicles applies) and it has a speed limit of 30 *m.p.h.*

A passenger vehicle is defined as a vehicle constructed solely for the carriage of passengers and their effects (now includes dual purpose vehicles). No speed limit outside the built-up area.

Hubbard v. *Messenger* (1937) 101 J.P. 533; [1937] 4 All E.R. 48 makes it clear that a vehicle originally constructed as a passenger vehicle and subsequently adapted to carry goods was a goods vehicle. As far as I am able to ascertain, there is no law to indicate whether a vehicle originally constructed as a goods vehicle can, by adaption, become a passenger vehicle except as a dual purpose vehicle.

In *Keeble* v. *Miller* (1950) 114 J.P. 143; [1950] 1 All E.R. 261, it appears that a vehicle must be judged on its present construction and not on its original construction. In this particular case a heavy motor car, by reconstruction, became a light locomotive.

The mobile caravan which I and my colleagues are particularly interested in and, I may say, of divided opinion, does not comply with all the requirements necessary for a dual purpose vehicle. It is fitted with a bed, water sink, toilet, wardrobe, five gallon clear water supply tank and a five gallon waste water tank.

The points at issue would seem to be:

(*a*) Can the contents of the caravan, namely bed, water sink, wardrobe, water tanks, etc., being permanent or essential permanent fixtures, form part of the unladen weight of the vehicle or do they constitute a load; or

(*b*) Can these items be in any way described as "effects of passengers."

For registration and licensing purposes it is clear that the caravan, until such time as it carries goods, is not a goods vehicle and would be taxed at the "Private" rate of duty. It is my opinion that the fittings of this vehicle are not special equipment or apparatus and cannot be classified as part of the unladen weight of the vehicle. The articles are in fact goods, cannot be termed as passengers' effects and consequently this type of vehicle is subject to a speed limit of 30 *m.p.h.*

MOMAN.

Answer.

We suspect that this is a question which will one day come before the High Court for decision and we should not be surprised to find that they took a view different from our own. It seems to us that if the construction of the body of this vehicle is such that the various items form an integral part of it, they can properly be included in the unladen weight of the vehicle. If this does not exceed three *tons* then the 30 *m.p.h.* speed limit does not apply.

13.—Water Supply—*Free supply for cattle on farms.*

A part of this urban district is rural in character, and the drainage of some properties is not connected to any public sewer. In some cases sewage effluent, after passing through septic tanks, and in other cases sink waste water, flows into a water course or ditch which passes through some farms. It is alleged by the farmers concerned that, as a result, the water in the water course or ditch is polluted and injurious to cattle who may drink out of it. It has been suggested that the urban district council, who are also the water undertakers for the urban district, should provide an alternative means of water supply by means of installing water troughs in the fields concerned and furnishing a free supply of water from the council's mains. The sewage effluent has been discharged into the watercourse or ditch for many years, apparently without complaint until the last year or two. Please advise whether the council can legally provide a free supply of water in the circumstances indicated.

P. BUDA.

Answer.

The power to give a free supply for domestic purposes in s. 124 (3) of the Public Health Act, 1936, will not apply, and there is no other power. *See* also s. 126 (4).